

STATE OF DELAWARE

PUBLIC EMPLOYMENT RELATIONS BOARD

SEAFORD EDUCATION ASSOCIATION AND)	
SEAFORD SUPPORT STAFF ASSOCIATION,)	
DSEA/NEA,)	
)	
Charging Parties,)	<u>ULP No. 15-12-1018</u>
)	
v.)	Probable Cause Determination
)	
SEAFORD SCHOOL DISTRICT,)	
)	
Respondent.)	

BACKGROUND

Seaford School District (District) is a public school employer within the meaning of §4002(q) of the Public School Employment Relations Act, 14 Del.C. Chapter 40 (PSERA).

Seaford Education Association, DSEA/NEA (SEA), is an employee organization within the meaning of 14 Del.C. §4002(i). It is the exclusive representative of a bargaining unit of certain public school employees of the District, within the meaning of §4002(j). SEA represents a bargaining unit which includes Teachers, Guidance Counselors, Librarian, Nurses, Psychologists, Speech and Hearing Specialists, Visiting Teachers, Coordinators of Subject and Grade, Coordinator of Special Programs, Social Workers, Educational Diagnosticians, and Professional Employee Therapists employed by the Seaford School District.

Seaford Support Staff Association, DSEA/NEA (SSSA), is an employee

organization within the meaning of 14 Del.C. §4002(i). It is the exclusive representative of a bargaining unit of certain public school employees of the District, within the meaning of §4002(j). SSSA represents a bargaining unit which includes all Paraeducators employed by the Seaford School District. DOL Case 17.

At all times relevant to this charge, the District and SEA were parties to a collective bargaining agreement. The current agreement has a term of July 1, 2015 through June 30, 2016.

At all times relevant to this charge, the District and SSSA were parties to a collective bargaining agreement. The current agreement has a term of July 1, 2013 through June 30, 2016.

On or about December 3, 2015, SEA and SSSA filed the instant unfair labor practice charge alleging that the District violated 14 Del.C. §4007 (a)(5), which states:

§4007. Unfair Labor Practices

- (a) It is an unfair labor practice for a public employer or its designated representative to do any of the following:
 - (5) Refuse to bargain collectively in good faith with an employee representative which is the exclusive representative of employees in an appropriate unit.

SEA and SSSA allege that in August, 2015, the District issued a document entitled “Employee Dress Expectations” with which all teachers and paraeducators were directed to comply. The unions assert that by unilaterally developing and implementing a dress code policy, the District failed or refused to bargain collectively concerning a mandatory subject of bargaining, in violation of its obligations under the PSERA.

The District filed its Answer to the Charge on December 15, 2015, in which it denies it unilaterally implemented a change to a mandatory subject of bargaining. It asserts the parties agreed during negotiations of the current collective bargaining agreement

covering professional employees represented by SEA, that guidelines on “appropriate and professional dress” would be established by the Superintendent. It also asserts the Superintendent invited representatives of both SEA and SSSA to meet with him to discuss the dress code, but that the unions declined to engage in such discussions.

There was no new matter included in the District’s Answer.

This probable cause determination results from a review of the pleadings.

DISCUSSION

Regulation 5.6 of the Rules of the Delaware Public Employment Relations Board requires:

- (a) Upon review of the Complaint, the Answer and the Response the Executive Director shall determine whether there is probable cause to believe that an unfair labor practice may have occurred. If the Executive Director determines that there is no probable cause to believe that an unfair labor practice has occurred, the party filing the charge may request that the Board review the Executive Director’s decision in accord with the provisions set forth in Regulation 7.4. The Board shall decide such appeals following a review of the record, and, if the Board deems necessary, a hearing and/or submission of briefs.
- (b) If the Executive Director determines that an unfair labor practice may have occurred, he shall where possible, issue a decision based upon the pleadings; otherwise, he shall issue a probable cause determination setting forth the specific unfair labor practice which may have occurred.

For purposes of reviewing the pleadings to determine whether probable cause exists to support the Charge, factual disputes revealed by the pleadings are considered in a light most favorable to the Charging Party in order to avoid dismissing a valid charge without the benefit of receiving evidence in order to resolve factual differences. *Flowers v. DART/DTC*, PERB Probable Cause Determination, ULP 04-10-453, V PERB 3179, 3182 (2004).

In its Answer, the District states:

...[G]iven the absence of a clear record of a mutual agreement that the Superintendent would establish guidelines/expectations for paraeducators, the Employee Dress Expectations set forth in Exhibit C to the Charge will be rescinded as to paraeducators. *Answer ¶5.*

Whether this rescission has been effectuated and whether it resolves the portion of the Charge which relates to SSSA requires clarification and verification. While the remainder of the probable cause determination will refer to SEA, it will also apply to SSSA if the rescission does not resolve the charges.

On their face, the pleadings provide a sufficient basis to conclude that an unfair labor practice may have occurred. The pleadings identify issues of fact, including whether the policy has been implemented; whether it was implemented without affording SEA the opportunity to negotiate; and the origin of the excerpted single page document appended to the District's Answer as Exhibit 1.

The pleadings also raise legal issues, including whether SEA waived its right to negotiate with respect to the substance of the dress code during collective bargaining negotiations.

To prevail in this matter, SEA must establish by a preponderance of the evidence that the District has implemented a unilateral change in a mandatory subject of bargaining, without notice and the opportunity to negotiate, in violation of its statutory obligations. A hearing will be promptly scheduled for the purpose of establishing a factual record on which argument can be considered in order to render a determination on this Charge.

DETERMINATION

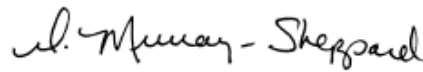
Consistent with the foregoing discussion, the pleadings constitute reasonable cause to believe that an unfair labor practice may have occurred, when considered in a light most

favorable to the Charging Party(s).

A hearing will be scheduled for the purpose of creating a record on which argument can be made and a determination reached as to whether the District engaged in conduct in violation of its statutory bargaining obligations by unilaterally implementing a change in a mandatory subject of bargaining without negotiation, in violation of 14 Del.C. §4007 (a)(5), as alleged.

IT IS SO ORDERED.

DATE: February 24, 2016

A handwritten signature in cursive script, reading "D. Murray-Sheppard", written in dark ink.

DEBORAH L. MURRAY-SHEPPARD
Executive Director
Del. Public Employment Relations Bd.